

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANDERSON LEE FERNANDERS,

Plaintiff,

Civil No. 09-12933
Hon. John Feikens
Mag. Judge Donald Scheer

v.

MICHIGAN DEPARTMENT OF
COMMUNITY HEALTH,

Defendant.

ORDER ADOPTING IN PART REPORT AND RECOMMENDATION

I have before me, Magistrate Judge Donald A. Scheer's Report and Recommendation ("Report") (Docket #15). In his Report, Magistrate Judge Scheer recommends that I grant Defendant's Motion to Dismiss because of Plaintiff's failure to provide a right to sue letter from the EEOC. Magistrate Judge Scheer also recommends that Plaintiff's claims under Michigan's Whistleblower Protection Act be dismissed for failure to state a claim. Plaintiff filed an Objection to the Report, and attached his right to sue letter from the EEOC. Defendant filed a Response to Plaintiff's Objection. In its Response, Defendant requests that the Report be adopted as to Plaintiff's claims under Michigan's Whistleblower Protection Act and that the Court return Defendant's Motion to Dismiss to Magistrate Judge Scheer for further consideration of the other grounds in the Motion. Plaintiff filed a Reply, asserting that his whistleblower claims are based on

"§ 5328" without further explanation. Plaintiff appears to be referencing the whistleblower protections in 31 U.S.C. § 5328. I fail to see how 31 U.S.C. § 5328, which provides protection for those reporting violations involving financial transactions, applies to the allegations in this case. Having considered the arguments set forth by the parties, I ADOPT Magistrate Judge Scheer's Report as it relates to Plaintiff's whistleblower claims and DISMISS Plaintiff's whistleblower claims (Count Seven). In light of Plaintiff's production of a right to sue letter, I RETURN Defendant's Motion to Dismiss to Magistrate Judge Scheer for consideration of the other grounds for dismissal set forth in the Motion.

IT IS SO ORDERED.

Date: November 23, 2009

s/ John Feikens
John Feikens
United States District Judge

Proof of Service

I hereby certify that the foregoing order was served on the attorneys/parties of record on November 23, 2009, by U.S. first class mail or electronic means.

s/Carol Cohron
Case Manager